

Tuesday, July 8, 2008

The Board met at its offices at 450 N Street, Sacramento, at 12:00 p.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Michelle White-Sutherland, 396887

2002, \$93.64 Interest Amount, \$101.00 Collection Fee, \$50.75 Amnesty Interest Penalty

For Appellant:

Michelle White-Sutherland, Taxpayer

Esther Park, Representative

For Franchise Tax Board:

Lee Gobuty, Tax Counsel

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly determined not to abate interest for 2002.

Whether respondent properly imposed the collection cost recovery fee for 2002.

Whether this Board has jurisdiction over the unpaid amnesty interest penalty imposed for 2002.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Wesley – Jessen Corporation, 298669 (OH)

10-1-98 to 9-30-01, \$24,959.58 Tax

Action: Redetermine as recommended by the Appeals Division.

Agorra Building Supply, Inc., 168917 (CH)

7-1-98 to 6-30-01, \$697,775.33 Tax, \$174,443.98 Penalty

Action: Redetermine as recommended by the Appeals Division.

Alexander Charles Dunlap, 381588 (EH)

4-1-02 to 9-30-05, \$62,445.84 Tax

Action: Redetermine as recommended by the Appeals Division.

The Playset Company, Inc., 347718 (EH)

7-1-01 to 6-30-04, \$187,642.26 Tax, \$22,345.76 Negligence Penalty, \$6,940.27 Amnesty Double Negligence Penalty, \$8,007.51 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *John P. Fields and N. Carol Fields, 361390; Melody L. Beattie, 359059; and, Gregory B. Duro, 354992.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Jane S. Bishop, 351914

2002, \$3,420.00 Tax

Action: Modify the action of the Franchise Tax Board.

John P. Fields and N. Carol Fields, 361390

1996, \$2,706.00 Claim for Refund

Action: The Board took no action.

Santosh K. Maheshwari, 355153

1996, \$11,694.74 Assessment

1997, \$8,150.89 Assessment

1998, \$4,256.08 Assessment

Action: The Board found it does not have jurisdiction to consider this appeal in regards to the taxes, penalties and fees, otherwise sustain the action with concession by the Franchise Tax Board.

Donald B. Russell, 347413

2003, \$236.00 Assessment, \$100.00 Late Filing Penalty, \$59.00 Failure to File Upon Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Annette Swanton, 343046

2000, \$6,817.38 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jonathan Yuan, 357296

2000, \$24,204.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John S. Ballard, 383699

2004, \$5,277.00 Tax, \$1,319.25 Late Filing Penalty, \$1,319.25 Notice and Demand Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Melody L. Beattie, 359059

1997, \$20,000.00 Claim for Refund

Action: The Board took no action.

Vincent Castell, 383701

2004, \$4,235.00 Tax, \$1,058.75 Late Filing Penalty, \$1,058.75 Notice and Demand Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Arturo A. Cueva, 384279

2004, \$1,304.00 Tax, \$326.00 Late Filing Penalty, \$326.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Elisabeth J. De Telder-Collins, 389105

2000, \$1,802.00 Claim for Refund

Action: Deny the petition for rehearing.

Tennison Dong, 384280

2004, \$31,715.00 Tax, \$7,928.75 Late Filing Penalty, \$7,928.75 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Gregory B. Duro, 354992

2000, \$78,391.00 Assessment

Action: The Board took no action.

Richard Grant, 381468

2003, \$6,272.00 Tax, \$1,568.00 Late Filing Penalty, \$1,568.00 Notice and Demand Penalty, \$1,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Benjamin Killen, 383404

1997, \$1,592.00 Tax, \$398.00 Late Filing Penalty, \$398.00 Notice and Demand Penalty, \$120.00 Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Eldo Klingenberg, 381471

2004, \$2,524.00 Tax, \$631.00 Late Filing Penalty, \$631.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Mark Morgan, 378779

2004, \$535.00 Tax, \$314.00 Notice and Demand Penalty, \$133.75 Late Filing Penalty

Action: Deny the petition for rehearing.

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Anthony Oropeza, 382832

2004, \$2,078.00 Tax, \$519.50 Late Filing Penalty, \$519.50 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Richard Shirasawa, 384459

2004, \$6,012.00 Tax, \$1,503.00 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Jintau Two, 377464

2004, \$12,245.00 Tax, \$3,061.25 Late Filing Penalty, \$3,061.25 Notice and Demand Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Kathryn Landis, 377866

1990, \$5,527.00 Claim for Refund

1991, \$1,088.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Sergio Bayardo, 387980

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Scott B. Beckett, 378592

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Avelino F. Elido, 373282

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Nathaniel Kuhn, 391709

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Josephine Ellis Mitchell, 350002

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Mario Mondelli, 399436

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jacqueline Jean Stratton, 406625

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ellen Tanno, 386509

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Maria DeJesus Lopez, 383536

2005, \$347.50

Action: Deny the petition for rehearing.

Yasmin Gonsouland, 341130

2005, \$347.50

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Montage Hotels and Resorts, LLC, 429393 (EA)

10-1-03 to 9-30-06, \$68,214.59

Action: Approve the redetermination as recommended by staff.

Walters Wholesale Electric Co., 445720 (AA)

1-26-08 to 2-25-08, \$88,500.00

Action: Approve the relief of penalty as recommended by staff.

Inamed Medical Products Corporation, 445350 (GH)

1-1-01 to 6-30-06, \$398,129.85

Action: Approve the denial of claim for refund as recommended by staff.

Farm Credit Leasing Services Corporation, 427401 (OH)

10-1-04 to 12-31-07, \$108,852.88

Action: Approve the denial of claim for refund as recommended by staff.

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L-3 Communications Electron Technologies, Inc., 298383 (AS)

7-1-02 to 10-31-03, \$950,154.44

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matter: *The Mercury Trust, 374580 (UT)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Pioneer Electronics USA, Inc., 441804 (AA)

1-1-04 to 12-31-06, \$160,442.42

Action: Approve the refund as recommended by staff.

Regency Enterprises Incorporated, 399333 (AC)

10-1-06 to 12-31-06, \$53,282.70

Action: Approve the refund as recommended by staff.

Inamed Medical Products Corporation, 393629 (GH)

1-1-01 to 6-30-06, \$6,856,643.74

Action: Approve the refund as recommended by staff.

Advanced Micro Devices, Inc., 314903 (GH)

4-2-01 to 12-26-04, \$461,426.12

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 435530 (KH)

10-1-07 to 12-31-07, \$416,190.99

Action: Approve the refund as recommended by staff.

Cargill, Incorporated, 436408 (OH)

4-1-05 to 6-30-07, \$95,636.18

Action: Approve the refund as recommended by staff.

Arbonne International, Inc., 389008 (EA)

1-1-03 to 6-30-05, \$276,758.26

Action: Approve the refund as recommended by staff.

Farm Credit Leasing Services Corp., 427401 (OH)

10-1-04 to 12-31-07, \$247,916.31

Action: Approve the refund as recommended by staff.

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The Mercury Trust, 374580 (UT)

2-26-04 to 2-26-04, \$57,679.18

Action: The Board took no action.

Science Enrichment Services, Inc., 422840 (EA)

4-1-03 to 9-30-06, \$67,823.55

Action: Approve the refund as recommended by staff.

Venturi Wireless, Inc., 420990 (GH)

10-1-06 to 12-31-06, \$58,764.70

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 435151 (AP)

10-1-07 to 12-31-07, \$106,557.94

Action: Approve the refund as recommended by staff.

Earthlink Network, Inc., 341197 (AP)

1-1-98 to 9-30-00, \$254,292.67

Action: Approve the refund as recommended by staff.

Americredit Financial Services, Inc., 424997 (OH)

7-1-07 to 9-30-07, \$1,226,503.09

Action: Approve the refund as recommended by staff.

Fresno County Employees' Credit Union, 395733 (KH)

10-1-05 to 6-30-07, \$57,782.97

Action: Approve the refund as recommended by staff.

Cig Financial, 434866 (EA)

7-1-07 to 9-30-07, \$106,858.50

Action: Approve the refund as recommended by staff.

Earthlink, Inc., 341995 (GH)

10-1-00 to 12-31-03, \$866,474.51

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Sierra Textile Company, L.P., 301401 (EH)

10-1-01 to 12-31-03, \$33,655.31 Tax, \$1,770.47 Amnesty Interest Penalty

Considered by the Board: February 26, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Herb's United Drugs, Inc., 217922, 439777 (AS)

4-1-99 to 3-31-02, \$0.00 Tax, \$0.00 Penalty

Considered by the Board: February 26, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Juan M. Perez, 330117 (AA)

7-1-01 to 3-31-04, \$89,649.66 Tax, \$27,653.94 Penalties

Considered by the Board: February 27, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Bay Briar Shoppe, Inc., 405478 (ET)

May 1, 2007, \$963.13 Approximate Value

Considered by the Board: April 8, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

M & B Corporation, 417080 (ET)

June 27, 2007, \$ Approximate Value

Considered by the Board: April 8, 2008

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Richard D. Hebb & Gregory L. Smith, 250398 (MT)

1-1-91 to 10-6-91, \$12,485.05 Childhood Lead Poisoning Prevention Act Fee, \$0.00 Penalty

H & S Coatings, Inc., 261373 (MT)

10-7-91 to 12-31-99, \$180,433.62 Childhood Lead Poisoning Prevention Act Fee, \$0.00 Penalty

Considered by the Board: Hearing Notice Sent – No response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Shawn Mills, 402021

2001, \$8,151.00 Tax, \$2,039.00 Late Filing Penalty, \$852.28 Post-Amnesty Penalty

Considered by the Board: February 26, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Taiheiyo Cement USA, Inc., 332855

1998, \$1,668,152.00 Claim for Refund

1999, \$273,149.00 Claim for Refund

Considered by the Board: February 1, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision granting the petition for rehearing.

The Board recessed at 12:24 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolution extending its best wishes on his retirement and its appreciation for his service to the State Board of Equalization and the State of California. (Exhibit 7.1.)

David E. Hayes, Chief, Research and Statistics Section

Action: Approve the Board Meeting Minutes of June 24, 2008.

Exhibits to these minutes are incorporated by reference.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

John I. Alioto and Linda M. Alioto, 204713

1989, \$127,171.00 Tax, \$6,358.55 Negligence Penalty, \$31,792.75 Late Filing Penalty

1990, \$5,293.00 Tax, \$1,058.60 Accuracy Penalty

1991, \$180.00 Tax, \$36.00 Accuracy Penalty

For Appellant:

John I. Alioto, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have demonstrated error in the assessments of tax and penalties, which are based upon federal actions.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SPECIAL PRESENTATION

On behalf of the Board, Dr. Chu presented to David E. Hayes, Chief, Research and Statistics Section, and read into the record a retirement resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. The Members made favorable personal remarks as each thanked Mr. Hayes for his diligent work and for serving not just the Board, but the Legislature and many other State agencies.

SALES AND USE TAX APPEALS HEARINGS

Ferede Beyene Negash and Lielti Desta Mesfi, 336999 (GH)

2-1-05 to 2-28-05, \$697.00 Tax

For Petitioner:

Ferede Negash, Taxpayer

Aschilew Jember, Representative

For Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioners have established that the deduction for claimed exempt food sales was proper.

Whether petitioners' deduction for costs of labor and repair of the restaurant property and equipments was proper.

Whether petitioners have established that their deduction for bad debts was proper.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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G & G Aviation, 315506 (UT)

May 16, 2002, \$232,500.00 Tax, \$0.00 Penalty

For Petitioner:

Gary Bosstick, Taxpayer

Steve Roth, Attorney

Kyle Nordrehaug, Attorney

For Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that its purchase and use of the aircraft is exempt from use tax because the aircraft was principally used in common-carriage operations.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

George Sanderson Sturges, Jr., 298532 (UT)

August 7, 2003, \$7,250.00 Tax

For Petitioner:

George Sanderson Sturges, Jr., Taxpayer

For Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence supports a reduction of the estimated purchase price of the aircraft.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS

RULEMAKING

Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property

Carla Caruso, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the taxpayer petition to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells. (Exhibit 7.2.)

Speaker: William Connell, Military Veteran and owner of All American Surf Dog

Ms. Yee directed staff to check in with the Senate Veteran's Committee to get AB 3009 out of Revenue and Taxation suspense file.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be held in abeyance until the outcome of pending legislation and continue this matter to the October Sacramento Board meeting.

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ADMINISTRATIVE SESSION**ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****Legislative Committee**

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein. (Exhibit 7.3.)

Committee votes were as follows:

A recommendation of support for AB 1759, PT: Disaster Relief (DeVore) unanimously passed, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation of support for AB 3035, PT: Welfare Exemption: Supplemental Assessment (Huffman) unanimously passed, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation of support for SB 1064, PT: Disaster Relief (Hollingsworth) unanimously passed, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation of support for SB 1562, PT: Disaster Relief: Fruit and Nut trees and Grapevines (Hollingsworth) unanimously passed, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation of support for SB 1641, Report to the Legislature: Electronic Submission (Oropeza) unanimously passed, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein. (Exhibit 7.4.)

Committee votes were as follows:

Proposed Revisions to Regulation 1602.5, *Reporting Methods for Grocers*, Regarding the Use of the Electronic Scanning Systems

A motion by Mr. Leonard, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved and authorized publication of the proposed regulatory amendments.

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Customer Services and Administrative Efficiency Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report on Item 1 and approved enhancements to the sales and use tax online tutorial. (Exhibit 7.5.)

Upon motion of Mr. Leonard, seconded by Ms. Mandel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board approved the Customer Services and Administrative Efficiency Committee report on Item 2 reaffirming its June 24, 2008 action to establish when settlement offers may be submitted.

Property Tax Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein. (Exhibit 7.6.)

Committee votes were as follows:

Biopharmaceutical Industry – Business Property Assessment Practices Guidelines

A motion by Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted staff's recommendation as presented in Issue Paper 08-007.

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding the Multistate Tax Commission–Federation of Tax Administrators.

Ramon Hirsig, Executive Director, provided a report regarding time extensions to Amador, El Dorado, Inyo, Mono and San Benito Counties to complete and submit 2008-09 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155. (Exhibit 7.7.)

Deputy Directors Reports

Elizabeth Houser, Deputy Director, Administration Department, provided a report regarding fiscal year 2009/2010 Conceptual Budget Change Proposals. (Exhibit 7.8.)

The Members discussed their various concerns and gave feedback on what they felt should be addressed. The following are suggestions made by the Members to guide staff in improving the proposals:

- Collect and give hard evidence to justify proposals for new positions and continued limited-term positions.

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- Circulate Department of Finance's Budget Policy letter to each of the Board Member offices before the August Sacramento Board Meeting.
- Separate the Tax Litigation Defense concept into two separate Budget Change Proposals: Appeals Workload and Tax Litigation.
- Outline a plan for hiring quality people within the time frame presented to the Legislature.
- Complete a facilities/housing plan for the new hires outlined in the Budget Change Proposals by the August Board Meeting.
- Compile hard evidence on revenue, citations, and actions of current programs. Analyze the evidence to see if compliance is increasing in all the programs and in addition put forth proposals to make improvements to the programs and how we conduct business.
- Consider the distinction between Tax Gap and Best Practices, and focus on Best Practices.

Elizabeth Houser, Deputy Director, Administration Department, provided a BOE headquarters building update.

Elizabeth Houser, Deputy Director, Administration Department, provided an update on the proposed budget for fiscal year 2008-2009.

Adoption of the 2008-09 Private Railroad Car Tax Rate

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2008-09 private railroad car tax rate of 1.096 percent as recommended by staff. (Exhibit 7.9.)

Adoption of the 2008 Private Railroad Car Roll

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Steel not participating in *Occidental Chemical Corporation; ConocoPhillips Company, Inc.*; and, *Chevron Phillips Chemical Company, LP*, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2008 Private Railroad Car Roll. (Exhibit 7.10.)

Adoption of the 2008 State-Assessed Property Roll

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Steel not participating in *ConocoPhillips Company* and *ConocoPhillips Pipe Line Company*, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2008 State-Assessed Property Roll. (Exhibit 7.11.)

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ANNOUNCEMENT OF CLOSED SESSION

Dr. Chu announced that Closed Session has been postponed.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JULY 8, 2008**

John I. Alioto and Linda M. Alioto, 204713

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Dr. Chu but failed to carry, Dr. Chu and Ms. Yee voting yes, Mr. Leonard, Ms. Steel and Ms. Mandel voting no.

Mr. Leonard moved to grant the appeal. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

The Board deferred the matter to later in the day.

Michelle White-Sutherland, 396887

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board in regards to the interest abatement, and dismissed the other issues for lack of jurisdiction.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
JULY 8, 2008**

Ferede Beyene Negash and Lielti Desta Mesfi, 336999 (GH)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

G & G Aviation, 315506 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

George Sanderson Sturges, Jr., 298532 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD JULY 8, 2008**

John I. Alioto and Linda M. Alioto, 204713 (Continued from earlier in the day)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board

Tuesday, July 8, 2008

adopted a decision modifying the action of the Franchise Tax Board to reflect that: (1) Alioto and Alioto, a Professional Corporation (AAPC) underwent a *de facto* liquidation as of March 31, 1989, (2) AAPC accrued \$1,950,675.50 from the Raiders Fee in its tax year ending March 31, 1989; (3) appellants recognized a gain upon AAPC's *de facto* liquidation in 1989 in the amount of \$784,190.63 (which includes a \$25,000 basis in AAPC); and, (4) the Board accepted respondent's concession to reduce appellants' taxable income in accordance with the revised federal determination as reflected in the tax court order dated February 27, 2001.

The Board adjourned at 6:00 p.m. in memory of Member Bill Leonard's father, William E. Leonard Sr., who passed away June 5, 2008, in San Bernardino at age 85, and who had been involved in California's transportation and building industry for over 50 years.

The foregoing minutes are adopted by the Board on August 20, 2008.

Note: The following matter removed from the calendar prior to the meeting: *Marcella Maria Rosales, 308469 (KH)*.